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STATE FOR INL/C, INL/LP (BOZZOLO) AND WHA/CAR (BUDDEN)
JUSTICE FOR OPDAT (ROBERT LIPMAN)
TREASURY FOR OTA (FRED BORAKOVE)

E.O. 12958: N/A

TAGS: [JM](#) [KCOR](#) [KCRM](#) [KJUS](#) [PGOV](#)

SUBJECT: ANTI-CORRUPTION STRATEGY: CONTRACTOR GENERAL OF
JAMAICA

11. Summary: Please see the action request in paragraph 12. Currently, the Mission is exploring mechanisms for encouraging the Government of Jamaica (GOJ) to curb corruption. In keeping with the Mission's evolving strategy plan on anti-corruption, we are meeting with heads of Jamaican government entities that can play key transparency roles in promoting better governance. Most of these government offices are empowered to expose violations of laws/regulations and can refer violations by public officials to the Director of Public Prosecutions (DPP). In pursuit of our quest for better understanding of these key players and possible avenues for improving their performance, the Acting Director of the Narcotics Affairs Section (NASDIR) met with Contractor General Greg Christie on March 1. Although his powers are limited, Christie demonstrates courage in exposing irregularities and violations with respect to government contracts. End Summary.

BACKGROUND

12. Established in 1986 by the Contractor General Act of 1983, the Office of the Contractor General (OCG) is an independent commission of parliament. The Contractor General (CG) is appointed by the Jamaica's Governor General after consultation with the Prime Minister and the Leader of the Opposition and serves a renewable term of 7 years. The CG's primary functions are to a) monitor the award and implementation of government contracts; b) monitor the grant, issuance, suspension or revocation of government licenses; and c) conduct investigations into registration of contractors, tender procedures, award and implementation of government contracts, circumstances of granting or revoking prescribed licenses. While the monitoring functions are mandated by law, the investigative function is discretionary.

In order to carry out these functions, the CG has a) the right to be advised of the award of all Government contracts by a public body; b) powers of inquiry, inspection and discovery that allow his access to premises, documents, records or information relating to contracts or licenses; and c) the power to require any public officer or any person to provide him with information regarding the award of any government contract or the suspension or revocation of any government license. Contracts are reviewed to determine compliance with Government Procurement Guidelines.

13. The CG's secondary function deals with the National Contracts Commission (NCC). He is responsible for obtaining the budget for the NCC, as well as providing administrative and technical assistance required for the operation of the NCC. Like, the OCG, the NCC is an independent commission of parliament with its own powers. It was established through

an amendment to the Contractor General Act, in 1999, and became fully operational in 2001. Its eight members are appointed by the Governor General (Christie is one of them), who serve a seven-year term. The primary functions of the NCC are to promote efficiency in the process of awarding and implementing government contracts and to ensure transparency and equity in the awarding of contracts. The NCC examines and approves recommendations to award government contracts valued at JA dollars 4 million and above. It makes recommendations to Cabinet regarding award of contracts valued at JA dollars 15 million or above. It registers and classifies contractors who wish to bid on Government contracts and constantly assesses their capacity to perform, as well as their actual performance. The NCC can make recommendations to Cabinet to improve the efficiency of procedures for granting and implementing contracts. NCC oversees the activities of the seven sectoral committees through which contract award recommendations must be routed by the sponsoring government procurement agency. Finally, the NCC is empowered to make regulations prescribing the registration and classification requirements for contractors, the procedure for submission of tenders for contracts, requirements for contractors to enter into performance bonds, competitive bidding on government contracts, and the circumstances under which a contractor's registration may be canceled.

¶4. There are 200 public bodies that are subject to the CG's scrutiny. They include ministries, departments, and agencies of the Government, as well as statutory bodies, statutory authorities and companies registered under the Companies Act, in which government or any agency of government holds shares or, through other financial input, is in a position to influence the policy of the company. However, the CG's power is restricted with respect to contracts/licenses involving the security forces. The CG can monitor these documents, but cannot conduct investigations without express authorization of Cabinet.

¶5. Following an investigation, the CG must inform the principal officer of the public body and the appropriate Minister of the results of the investigation and make recommendations for resolving any problem. He may, at any time, submit a report to Parliament regarding a matter that he has investigated, which he believes requires the special attention of Parliament. After reports are presented to Parliament, the CG can publish any that are in the public interest.

RECENT EXAMPLES OF THE CG'S WORK

¶6. Corruption takes many forms. Over the years, it has been openly speculated that the awarding of government contracts was a major avenue of public corruption. The party in power would make an effort to reward loyal supporters (campaign contributors) with government contracts. That problem is compounded when loyal party supporters sit on public bodies that award contracts to private companies owned by the same person. Such things might be considered a conflict of interest, but maybe not, in Jamaica. In any case, since the beginning of the year, CG Christie has been exchanging salvos with Barbara Clarke, Chairperson of the Petroleum Company of Jamaica (PETCOM) over what appears to be a conflict of interest. Ms. Clarke apparently is the principal owner of companies that have benefited from government contracts by PETCOM since 1998. Clarke claims she has done nothing unlawful because she declared her holdings when she assumed the position with PETCOM and her company's initial contract with PETCOM predated taking the chairmanship of PETCOM. On March 1, the CG was quoted in the press as saying that he will look into the possibility of referring the case to the Director of Public Prosecutions. Comment: On March 5, Jamaica's Auditor General Adrian Stachan mentioned to NASDIR that Jamaica needs a law that clearly spells out a code of ethics (including conflict of interest) and provides serious penalties for violations. Stachan was probably signaling that there may be little that the CG or the DPP can legally

do in the Clarke case. But, if nothing else, Christie is not adverse to highlighting the need for conflict of interest laws. From another source, NASDIR was told it might be difficult to have a strong conflict of interest law in Jamaica. The reason is that Jamaica's business community is relatively small. To attract competent managers for public bodies, government must draw on executives from the private sector. If such a person were forced to relinquish control over his/her private business in order to chair a public body, that person would probably refuse the job. End comment.

17. The Contractor General does have the monitoring authority to require that all public bodies submit to him quarterly reports on the status of their government contracts. However, non-compliance was common and previous CG's did nothing about it. Christie (who was appointed in November 2005) announced in early 2007 there would be zero tolerance of non-compliance, which is a criminal offense. After giving fair warning to public bodies who failed to provide their last 2006 quarterly report (due midnight of January 31, 2007), he decided to refer these cases to the DPP. Christie told NASDIR there are 54 such cases. His intent is to send a message that public bodies must comply with his instructions. He knows the penalty will not be tough (maximum penalty is JA\$5000/US\$77 or up to one year in prison). But, unless reports are filed with him, he has no way to identify and investigate irregularities. Christie said he asked the DPP (Ken Pantry) to help him put the cases together, carefully documenting the fact that public bodies had received the CG's timely warning about compliance. The DPP's office assisted, and the cases should be presented formally to the DPP around March 15.

18. The CG emphasized to NASDIR that his investigative power was discretionary. His point was that his predecessors did not exercise that power. Christie is changing that, although he is hampered by an insufficient number of investigators. The CG said that, before he took over, there had been only one investigation into irregularities. Last year, he submitted over 20 reports on investigations. So far this year, he has opened 18 investigations. Comment: It will be interesting to see what comes from these investigations. Christie's willingness to pursue his responsibilities energetically contrasts with his predecessors. He has the power to keep specific corruption issues before the public for longer periods of time. In the past, irregularities were sometimes exposed and then, after a couple of days of play in the media, they were quietly forgotten. Of course, public exposure also embarrasses the party that governs. During an election year, public exposure can inflict more damage to the ruling party than would otherwise be the case. However, Christie insists convincingly that he is non-political. End comment.

STRENGTHENING THE OFFICE OF THE CONTRACTOR GENERAL

19. NASDIR expressed support for the work being done by Christie and explained the embassy's interest in engaging more pro-actively in anti-corruption efforts. Christie was grateful for the recognition. NASDIR mentioned that we would be working with other donors, particularly the British and Canadians, to identify ways in which we can be of assistance. According to the CG, there has been a long-standing problem of insufficient budget support to his office. Of a staff complement of 57, authorized in 1999, they never have had more than 45. This year Christie requested authorization to fund 66 positions. Of the 45 people, 12 inspectors work on investigations and only two of these are skilled investigators. The OCG staff is divided into five directorates: Technical Services, Construction Contracts, Licenses and Permits, Information Systems and Administration and Finance. His staff also supports the NCC, which does not have a staff of its own.

110. Christie also pointed out that insufficient budget support impacts negatively on his information technology capability. He has devised an electronic form for public bodies to complete and submit regarding contracts. He also

believes his office should be totally transparent and puts a great deal of information on a website (www.ocg.gov.jm). Due to the funding shortfall, he has to use his own laptop as his office pc. He constantly updates the website, also monitors e-forms.

¶11. As a follow up to our meeting, Christie sent NASDIR a letter dated March 7. He explained that he had attempted to address resource shortfalls through a restructuring assessment conducted last year by the Public Sector Reform Unit of the Office of the Cabinet. Resulting proposals were approved by the Ministry of Finance and Planning for implementation during the 2007/2008 fiscal year, "subject to budgetary considerations." To have a clearer view of needs for possible outside assistance to his office, Christie indicated that he must wait until April to learn of Cabinet's decision on the budget request. His operating and capital budget request is for JA\$185 million, compared to the current JA\$85 million. In the meantime, Christie made an urgent request for training in the following fields: anti-corruption management and governance; conduct of investigations (techniques, interviews, analyses, report writing); forensic auditing and auditing techniques; fraud detection; procurement, contracts and contractor monitoring management; information technology; utility of information technology and systems in procurement monitoring and anti-corruption management; strategic management/strategic plan development and implementation; and general management.

¶12. Action Request: The embassy would welcome Washington's advice about possible sources to provide elements of the requested training and availability timeframes (if possible). We would like to help OCG strengthen its investigative skills. Some NAS funds could be made available for that purpose. We should consider providing the same training to more than one Jamaican government entity when U.S. trainers are here. The embassy also would appreciate being informed of the US legal regime (how does our government go about making investigations and processing suspected contract irregularities and what are the criminal penalties for violations). In terms of strategy, the mission recognizes that anti-corruption also must focus on the upper levels of the GOJ. Christie's is one of a few offices that can do that. Probably future attention must be given to addressing the problem of weak penalties for violators. Nonetheless, the CG already is exercising his power to keep the issue of official corruption in the public eye, which may translate into pressure for reform. End Action Request.

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